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SENATE BILL 236
AN ACT TO ABOLISH THE DEATH PENALTY
TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
MARCH 25, 2009

I served as chief special prosecutor for the state for 21 years. One of my responsibilities was to assist county attorneys in the prosecution of complex cases. In that regard I prosecuted many homicide cases, five of which were tried as death penalty cases. All involved homicides committed by prison inmates against other inmates. In four of the cases I requested a death sentence; the fifth case involved a defendant who hanged himself prior to sentencing.

I also managed the prosecution of fourteen inmates for the 1991 prison riot homicides. In two other cases, I was required to contact the state prison to advise that an inmate could be put to death because there were no legal actions pending to preclude it. Because of these experiences, I have come to believe that the death penalty should be abolished. It is an incalculable drain on our limited criminal justice resources. It makes bizarre celebrities of the sentenced inmates while essentially ignoring the suffering the victims' families must endure through decades of legal scrutiny. And frankly, it lessens our own humanity.

In every homicide case I tried as a prosecutor, I made a closing argument that ended by trying to convey the value of human life to the jury, and the fact that the defendant had taken a human life without justification. I tried to emphasize the jury's responsibility to hold the defendant accountable for that unjustified loss of life. And then in death penalty cases, I would argue at sentencing that the court should impose a sentence of death. I was ultimately struck by the hypocrisy of my arguments.

The death penalty is not a deterrent. People who commit the kind of crimes that implicate the death penalty don't contemplate the consequences of their actions like we assume they do. Plea bargaining is virtually never an issue; my death penalty cases were all against inmates and they were not willing to plead to anything.

We have no way to assess accurate figures for the cost of the death penalty. The state has never tracked the costs of such cases from beginning to end. But in considering the litigation alone, common sense tells us that it is substantially more expensive than homicide cases without the death penalty. It is time for Montana to abolish the death penalty and commit our limited criminal justice resources to more important and practical uses, like making our prisons more secure and paying corrections staff sufficient salaries to keep qualified, dedicated professionals on the job.

HOUSE JUDICIARY COMMITTEE
Wednesday, March 25, 2009

Senate Bill 236: To repeal the death penalty in Montana

Mr. Chairman and Members of the Committee:

For the record, my name is Karla Gray, and I'm here as a private citizen—with perhaps a somewhat different background than most—to respectfully urge you to DO CONCUR in SB 236. I have been against the death penalty for as long as I can recall and for many reasons. I'll touch only briefly on a few of those reasons, before turning to those that are most compelling to me.

First, deterrence: It is often said, almost as an article of faith, that the death penalty is a deterrent. I couldn't disagree more. I've never seen a shred of evidence supporting the deterrence theory, and the continued number of executions in the so-called "death states"—Texas, Florida, Louisiana and Georgia, for instance—quite convincingly disputes it. In addition, of course, the deterrence theory necessarily is based on the idea that people who commit monstrous crimes sit around thinking about them in advance and decide whether or not to commit them based on the penalty. To me, this borders on the nonsensical. People who commit these and other crimes don't believe they'll be caught.

Next, innocence: Death really is different. Against the backdrop of newer science and the numbers of proven exonerees, including those on whom the death penalty had been imposed, are we willing—are you as individual legislators really willing—to risk killing people who are innocent? I sincerely hope not.

Next, "life in prison without parole is too good for them," or, as sometimes stated, "Deer Lodge isn't that bad." Like probably most or all of you, I too have been to the Montana State Prison. And it's certainly not as bad as prisons were in the "old days." But can you really imagine, from a short visit, the visceral and abysmal reality of knowing that you will be incarcerated every hour of every day of every month and year for the rest of your life?

Indeed, turning that theory on its head, one might suggest that executing people for the crimes which currently qualify for the death penalty in Montana is too good for them. After far too much cost to the taxpayers and far too much attention, execution delivers them from remaining incarcerated and forgotten until they die in the prison. And at the bottom line: execution is far too cheap a trade for the innocent life or lives they've taken.

But let me cut to the chase, and focus on the main reasons I oppose the existence of the death penalty in Montana, and why I ask you to repeal the death penalty by supporting SB 236, rather than reauthorizing it by voting against this bill. First, we could probably agree that people who

commit crimes which qualify for the death penalty in our great state are—usually—somewhat monstrous. Certainly my experience on the Montana Supreme Court, reviewing and usually affirming death penalty cases, leads me to this conclusion.

But shouldn't we be better than they? Mustn't we, as rational and thinking people, refuse to kill in the name of the State of Montana? I believe we must set a higher standard for ourselves, the standard set by most of what we would call the "civilized world," the standard which rejects execution.

And finally, I urge you to think about not just the decision, but the nature of the decision, this bill calls on each of you as individual legislators to make. For you, it is a question of yea or nay; up or down; green or red. It is your choice whether to keep the death penalty or abolish it. Each of you will make that choice—in executive action and on the House floor. And then the decision will be over—for you. But it's only the beginning for those who must implement your decision, those to whom you have delegated the duty to ensure that the death penalty is carried out as you created it in statute. And I can tell you from my own experience that traveling down the implementation road is an entirely different thing indeed. When a death case has begun, jurors can be impacted, individual judges can be impacted, certainly the Montana Supreme Court will be impacted if the sentence is death, personnel at the prison will be impacted and on and on.

I believe I was a good Justice. I followed my oath—the same oath you take—and faithfully discharged the duties of my office, including the duties regarding the death penalty that you imposed on me. No constitutional infirmity being present, I affirmed the death penalties of the three people executed in Montana during my tenure at the Court. To put it differently, I followed orders, your orders.

You know, it's easy to think about executing someone in the name of the State of Montana. But the "State" doesn't perform a single act which results in a homicide. Citizens of Montana, in various capacities, take all the actions which result in these executions. The "State" doesn't say "yep, let's do it." The "State" doesn't take a person into the death chamber. The "State" doesn't perform the injection that results in a homicide. And yes, make no mistake about it, the death certificates of the three people executed according to law in Montana in recent years list "cause of death" as "homicide." Tracking the language in your statutory definition of homicide, did I and many others—by our actions—purposely or knowingly cause the death of another human being? We did. We won't be prosecuted, of course, because we took our actions under color of state law. But that is scant comfort against what I'm convinced is the very corrosive toll on far too many Montanans who are involved in implementing the death penalty—and on many, many more.

Please support SB 236. Please get Montana out of the homicide business. Thank you for your consideration and, as always, thank for your public service.